STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of REGINALD DIONE WADE LONG, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

WEDRIA I. LONG,

Respondent-Appellant.

UNPUBLISHED
August 23, 2007

No. 276262
Wayne Circuit Court
Family Division
LC No. 80-219054-NA

Before: Davis, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Respondent appeals as of right from a trial court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(g), (j), and (m). For the reasons set forth in this opinion, we affirm.

Respondent has a lengthy history with child protective services, beginning in 1980, when the former Department of Social Services filed a petition alleging that she abandoned her son, Corey Long (born 1/21/79) on someone's doorstep with a note beseeching them to "do whatever is best for my child." After Corey went to live with his paternal grandmother, however, the probate court dismissed the petition. In June 1990, the DSS filed another petition requesting that the probate court place in its temporary custody respondent's two children, Corey and his elder sister, LaToya on the basis of allegations, among others, that respondent had acknowledged using illegal drugs, that she sold the household furnishings and used state-supplied assistance money to buy drugs, that she provided the children no food, that she physically abused the children,[2] and that she "gave them . . . drugs [Motrin and Keflex] because she wanted them to go to sleep so she could do her drugs." On August 15, 1990, the probate court found the allegations substantiated and adjudicated the children temporary court wards. The probate court eventually terminated its jurisdiction over both LaToya, after she reached 18 years of age, and Corey, who "was committed to the State Department of Social Services as a delinquent ward."

On January 26, 1997, the DSS filed a petition urging the probate court to terminate respondent's parental rights to Vione pursuant to MCL 712A.19b(c)(i) (conditions leading to adjudication continue to exist), former subsection (e) (failure to comply with a court-ordered

treatment plan), (g), (h) (imprisonment for more than two years without providing proper care and custody), and (j). After an April 2, 1997, termination hearing, the probate court found, in relevant part, that (1) apart from a brief interim between August 1992 and December 7, 1992, respondent had remained imprisoned throughout the pendency of the case, (2) although respondent averred that her earliest potential release date was in October 1997, her conduct in prison previously had pushed back her early release date, and her maximum term did not expire until February 2, 2001, (3) respondent ignored suggestions by the DSS that she write to the minor and obtain prison employment to earn money for the minor's support, (4) respondent had no prospective housing, and (5) respondent failed to substantiate her claim that while imprisoned she completed drug counseling and parenting classes. The probate court ordered termination of respondent's parental rights pursuant to subsections (c)(i), (g), and (h).

The proceeding leading to this appeal began in January 2005, when petitioner, then known as the Family Independence Agency, alleged that respondent, who was residing in a homeless shelter, left baby Reginald in the custody of a co-resident without informing anyone of her intended destination. The family court authorized the petition and ordered Reginald's placement in petitioner's temporary custody, on the basis of its findings that respondent "is homeless and without income," "has a history of mental illness, and is not in treatment." The family court also ordered that pending petitioner's decision whether to file a permanent custody petition concerning the minor in light of the court's prior termination of her parental rights to Vione, "reunification efforts are to continue."

Petitioner filed a more detailed amended petition on March 15, 2005, and respondent admitted to several of the petition's allegations: she "had a history of mental illness" for which she previously had been committed to Detroit Riverview Hospital; she sometimes failed to take prescribed psychotropic medications, despite that they stabilized her mental condition; LaToya, Corey, and Vione all had become court wards, and "they terminated the rights" to Vione; and she left Reginald at the shelter in the care of a woman she had known "for a short period of time," and while away used cocaine. In light of respondent's admissions establishing her mental health difficulties, substance abuse history, and improper supervision of Reginald, the family court adjudicated him a court ward. The family court ordered that respondent participate in a treatment plan consisting of a psychiatric evaluation and adherence to recommended treatments, random drug screens every week, "out-patient substance abuse treatment," individual therapy, parenting classes, weekly supervised visits, and maintenance of legal income and appropriate housing. Approximately 15 months later, in light of respondent's minimal progress toward her treatment plan goals, on August 24, 2006, petitioner filed a supplemental petition requesting termination of her parental rights pursuant to MCL 712A.19b(3)(g), (j), and (m). The supplemental petition summarized that respondent had complied with no elements of her treatment plan, that she "has an extensive and violent criminal history" and a substance abuse history, and that her physical abuse and neglect of her other children had led to termination of her parental rights to Vione.

At the time of the termination hearing, respondent was residing at the Scott Correctional Facility in Plymouth, Michigan. Respondent had requested that the family court make arrangements for her to appear at the termination hearing, but the family court instead allowed respondent to appear via telephone. Thus, respondent argues that the trial court violated her right

to due process and a fair proceeding by denying her request to appear at the termination hearing, and instead requiring that she participate by telephone. This Court considers de novo the legal question "whether constitutional due process . . . has been satisfied." *Reed v Reed*, 265 Mich App 131, 157; 693 NW2d 825 (2005). To the extent this issue involves the construction of a court rule, we also consider this legal question de novo. *CAM Constr v Lake Edgewood Condo Ass'n*, 465 Mich 549, 553; 640 NW2d 256 (2002).

Respondent's argument on appeal wholly ignores MCR 2.004, which provides in relevant part as follows:

> (A) This rule applies to
>
> * * *
>
> (2) other *actions involving* the custody, guardianship, neglect, or foster-care placement of minor children, or *the termination of parental rights,*
>
> *in which a party is incarcerated under the jurisdiction of the Department of Corrections.*
>
> * * *
>
> (C) When all the requirements of subrule (B) have been accomplished to the court's satisfaction, *the court shall issue an order requesting the department . . . to allow that party to participate with the court or its designee by way of a noncollect and unmonitored telephone call in a hearing* or conference . . . . The order shall include the date and time for the hearing, and the prisoner's name and prison identification number, and shall be served by the court upon the parties and the warden or supervisor of the facility where the incarcerated party resides. [Emphasis added.]

The rule's protection of a respondent's right to notice of a termination proceeding and an opportunity to participate in the proceeding, see MCR 2.004(B) and (E), satisfies constitutional due process guarantees, which generally require that a parent receive notice of a hearing potentially affecting her liberty interest in caring for her child and an opportunity to participate in the hearing, either personally or through counsel. *In re AMB*, 248 Mich App 144, 209-213; 640 NW2d 262 (2001); *In re Vasquez*, 199 Mich App 44, 49-50; 501 NW2d 231 (1993).

Respondent does not dispute that at the time of the termination hearing, she was incarcerated at the Scott Correctional Facility in Plymouth, or that she received adequate notice of the termination hearing. The record reflects that (1) the trial court arranged for respondent's participation in the entire termination hearing via telephone in compliance with MCR 2.004(C), (2) during the hearing respondent was represented by an attorney experienced in child protective proceedings, (3) the court permitted respondent to interrupt the caseworker's testimony on three occasions and confer with her counsel off the record, explaining, "I'll allow her to interrupt the record to convey a message to her attorney since she's not present and able to whisper in her

ear," (3) respondent's counsel cross-examined the caseworker, (4) respondent herself offered testimony, and (5) respondent's counsel argued in closing against the propriety of terminating her parental rights. Contrary to respondent's suggestion, the record does not reveal any hint of "awkwardness" at the hearing arising from her participation by phone. Because the trial court took care to arrange for respondent's notice of and participation via phone in the termination hearing, and because respondent had unrestricted opportunities to testify at the hearing and to confer with her counsel, who challenged petitioner's case on her behalf,[1] we conclude that the trial court's conduct of the hearing comported with general due process principles and MCR 2.004.[2]

Respondent next argues that the record did not clearly and convincingly establish any of the statutory grounds for termination invoked by the trial court. We review for clear error a trial court's finding that a ground for termination has been established by clear and convincing evidence "and, where appropriate, the court's decision regarding the child's best interest." *In re Fried*, 266 Mich App 535, 541; 702 NW2d 192 (2005) (internal quotation omitted); see also MCR 3.977(J). Clear error exists when some evidence supports a finding, but a review of the entire record leaves the reviewing court with the definite and firm conviction that the lower court made a mistake. *In re Conley*, 216 Mich App 41, 42; 549 NW2d 353 (1996).

With respect to subsection (g), the record clearly and convincingly establishes that respondent, "without regard to intent, fail[ed] to provide proper care or custody for the child and there is no reasonable expectation that [she] will be able to provide proper care and custody within a reasonable time considering the child's age." Regarding a failure to provide proper care and custody, irrespective of intent, respondent, who was unemployed and homeless when the child arrived in foster care, admitted at the adjudication trial that to facilitate her use of cocaine, she left the child at a shelter in the care of a short-term acquaintance, and that although she had long suffered from mental illness, she sometimes neglected to take medications that stabilized her condition.

Concerning any reasonable expectation that respondent might have the capacity to provide the child proper care and custody within a reasonable time considering his age, a long list of factors undercuts any such notion. The record in this case substantiates a long history of respondent's physical abuse or neglect of all her children, beginning 27 years earlier when she

---

[1] After reviewing the record, we find unpersuasive any suggestion by respondent that her request for substitute counsel, which the trial court denied, affected the fairness of the termination hearing. Respondent's counsel had represented her dating back to the adjudication trial, respondent identified no apparent grounds why counsel could not adequately represent her, and on appeal respondent offers no specific example of any manner in which her participation by phone somehow affected the attorney-client relationship.

[2] This case is distinguishable from *In re Render*, 145 Mich App 344, 346-350; 377 NW2d 421 (1985), in which this Court found due process unsatisfied in light of the facts that the respondent was incarcerated in the county jail at the time of a termination hearing, the respondent's counsel advised the court that "he only [had] learned of her incarceration on the day of the hearing," the respondent's counsel "had not spoken with his client in quite some time," and the court nonetheless proceeded to hold the termination hearing.

first abandoned a son on someone's doorstep. *In re AH*, 245 Mich App 77, 84; 627 NW2d 33 (2001) (surveying this Court's consistent recognition and acceptance of the anticipatory neglect doctrine, including its applicability to siblings not yet born). The record also documents a long history of substance abuse by respondent, and a long history of criminal involvement and repeated incarcerations, including at least twice since the minor child's placement in foster care, and most recently for feloniously attacking her eldest daughter. Respondent failed to comply with most requirements of her treatment plan: she made no sustained effort to participate in substance abuse treatment, exhibited ongoing mental instability, having attempted suicide in May 2006, and she never made progress toward obtaining appropriate housing. *In re Trejo*, 462 Mich 341, 360-361 n 16; 612 NW2d 407 (2000). The child is only three years of age and in need of stability in his life. Consequently, we conclude that the record clearly and convincingly demonstrates that no reasonable likelihood exists that respondent could provide proper care and custody for the child within a reasonable time considering his age.

Although only one statutory ground need exist to warrant termination of parental rights, we will address briefly the alternate grounds cited by the trial court. With respect to subsection (j), much of the evidence discussed concerning subsection (g) also clearly and convincingly establishes that in light of respondent's capacity or conduct, a reasonable likelihood exists that the child will suffer harm "if he . . . is returned to the home of the parent." Respondent previously placed the child in the care of another shelter resident she did not know well so that she could use cocaine. Neither at the time of the child's placement in foster care nor when the termination hearing took place did respondent have any housing. Respondent's failure to obtain a suitable residence by the time of the termination hearing owed at least in part to the fact that she had been incarcerated twice during the child's foster care placement, including most recently for assaulting her eldest daughter. The eldest daughter, along with her younger brother, became court wards in 1990 because of respondent's serious substance abuse, and her neglect and physical abuse of both children. From May 2005 through January 2007, respondent made insubstantial progress toward achieving mental stability or treatment for her well-documented difficulties with substance abuse. In summary, the evidence also clearly and convincingly supports the trial court's reliance on subsection (j) as a basis for terminating respondent's parental rights.

The trial court clearly erred, however, in relying on subsection (m), which contemplates that "[t]he parent's rights to another child were *voluntarily terminated* following the initiation of proceedings under section 2(b) of this chapter . . . ." (Emphasis added). The record reflects, and respondent does not dispute, that in 1997, the probate court entered an order terminating her parental rights to her third child. But respondent did not voluntarily relinquish her parental rights. Although the trial court erred by invoking subsection (m), this Court will not reverse a trial court when it reaches a correct result on the basis of incorrect reasoning. *In re Powers*, 208 Mich App 582, 591; 528 NW2d 799 (1995).

In light of the long history of this case substantiating respondent's physical abuse or neglect of all of the child's elder siblings, and the prior termination of respondent's parental rights to her third child after she was afforded several years to demonstrate her ability to provide proper care and custody, the record clearly and convincingly supports termination pursuant to either § 19b(3)(i), which provides that "[p]arental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior

attempts to rehabilitate the parents have been unsuccessful," or § 19b(3)(*l*), which contemplates that "[t]he parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state."

Lastly, regarding the trial court's finding concerning the child's best interests pursuant to MCL 712A.19b(5), respondent averred that she loved the child, and the caseworker testified that during the visits respondent attended, she interacted appropriately with the child. But we conclude that the trial court did not clearly err in rejecting the notion that termination of respondent's parental rights clearly would contravene the child's best interests, given the evidence of record demonstrating (1) her inability to provide any of her children proper care and custody, (2) her extended difficulties with substance abuse, (3) her ongoing legal difficulties, most recently the incarceration for two felonious assault convictions involving her daughter, (4) her failure to demonstrate mental stability, (5) the absence of any evidence that she ever has maintained suitable housing for the child, and (6) the child's very young age and need for permanency and stability in his life.

Affirmed.

/s/ Alton T. Davis
/s/ Bill Schuette
/s/ Stephen L. Borrello